

## Family Member Misconduct on Okinawa

By Rudy Wartella & Barbara Lee Shiroma

Family Member Misconduct is very serious, especially on Okinawa which resulted several years ago in the creation of administrative hearing processes by the Air Force and Marine Corps on Okinawa to effectively deal with this problem. Most individuals complete a tour on Okinawa without ever becoming involved in this disciplinary action process. Some of those who do become involved are unsure of the process itself and their rights. ***"The Army can't tell me what to do; I'm NOT in the Army!" "The Air Force can't tell my family what to do; I'm in the Army."*** As a Legal Assistance Attorney, I have heard these exclamations--or versions of them--for several years.

Having Family Members on Okinawa is a privilege. This privilege can be taken away if they commit egregious or numerous acts of misconduct. Installation commanders are charged with maintaining good order and discipline and are responsible for the welfare of the people living on or using their installation as well as maintaining good relations with our host country and communities. If an incident happens on Kadena Air Base or off base and appeared on the 18th Security Forces Squadron's police blotter, the case will be adjudicated by the Kadena Disciplinary Action Program. If the incident occurred on a Marine Corps installation or off base and was blotted by the Marine Corps Military Police, the case will be adjudicated by the Marine Base Inspector's Office. These adjudication processes will handle misconduct cases of civilian employees, local nationals, military retirees, and their Family Members, and the Family Members (adult and children) of a servicemember. Informally, it is known as a Family Member misconduct system, but in reality it is much more inclusive. The only category that will not be seen at one of these hearings is a member of the military, as they are covered by the provisions of the Uniform Code of Military Justice.

The Air Force and Marine Corps on Okinawa have published standards for their misconduct programs.

-- For misconduct on an Air Force Installation or off-base within Air Force jurisdiction (<http://www.e-publishing.af.mil/shared/media/epubs/18WGI31-201.pdf>) applies. I cannot get this link to work.

-- For misconduct on a Marine Corps Installation or an incident which occurred off base within Marine Corps jurisdiction, MARCORBASES JAOANO 5800.6A controls (<http://www.mcbbutler.usmc.mil/default.htm>). I cannot get this link to work.

Although these administrative hearings are not criminal trials or a court of law, they are considered formal hearings and Family Members do face adjudication of administrative sanctions. The standard of proof is a preponderance of the evidence (more likely than not) that the person committed misconduct. Since administrative sanctions are possible, the subjects of the incident are afforded certain rights, such as the right to be present at the hearing, the right to be advised of the offense, the right against self-incrimination, the right to present relevant evidence to the hearing officer, and the right to review redacted law-enforcement reports concerning the incident.

These hearings produce a swift and fair standard of justice. Normally, if there are several subjects of a single incident, all will be heard by the same hearing officer (unless conflicted), so an Army Family Member committing an offense on Kadena will

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get basically the same sanctions as an Air Force or Marine Corps Family Members committing the same offense. Some families may be tempted to refuse to participate in the process. Refusal will force the hearing officer to render a decision in their case, in absentia, based on the available evidence.

The hearing process not only renders punishment for misconduct but also attempts to identify problem areas to assist a family struggling with multifaceted problems by referring them for help or counseling. Sanctions can include a warning (verbal, written, or both); curfew; suspension of various privileges (driving / commissary / exchange); community service; no-contact orders; enrollment in the Youth Monitor Program; direction to enroll in Adolescent Substance Abuse Counseling at the school, direction to continue Family Advocacy-recommended treatment; and, for the more egregious cases or repeat offenders, suspended barment, first, or in the worst cases, barment (which will result in being barred from all installations in Japan). Some Family Members decide not to comply with the sanctions. In these cases, a subsequent hearing will be scheduled as this is considered additional misconduct. Each act of misconduct will move the Family Member closer to a barment action.

The Commander, 10th Support Group and U.S. Army, Okinawa, is kept aware of Army Family Member misconduct which occurs on Okinawa and can independently implement an Early Return of Dependents action (withdraw of command sponsorship and return to the United States); impose a barment action; or, any other type of sanction within his inherent authority as the senior Army commander on Okinawa. The Air Force or Marine hearing officer has the authority to impose his or her own sanctions. These sanctions are based on past experience with similar offenses by use of a sanction matrix; and, the information they have on hand regarding the amount of involvement the subject had in the particular case being heard. The hearing officer also takes into consideration the demeanor of the subject, sponsor, or other family members present at his or her hearing. Not acting with proper decorum and respect at a hearing may result in additional sanctions. Poor behavior at the hearing may be considered a further act of misconduct. The hearing process affords the subject an opportunity to present his or her side of the story. Not doing so means that a decision will be made based on the evidence at hand, without his or her input. Honesty is expected and if the hearing officer feels a person is less than truthful, the outcome of the hearing could be more severe.

In addition to administrative proceedings, Family Members who commit criminal acts may also be criminally prosecuted by the Governments of Japan or the United States.

Although attorneys are not allowed to represent clients at these hearings (this is not a court of law), civilian employees and Family Members and their military sponsors may seek legal advice at the Torii Station Legal Assistance Office. To make an appointment to see a legal assistance attorney, please call 644-4332.

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